



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Insurance Department

JONATHAN T. PIKE
Insurance Commissioner

Title & Escrow Commission Meeting

(<https://insurance.utah.gov/licensee/title/tec>)

Date: June 30, 2021

**Place: In Person
NONE**

Virtual

Google Meet

meet.google.com/oyr-bqw-urp

(513) 816-0801 Phone

766 866 768# Password

Time: 3:00 PM

This special meeting was called at the request of the Insurance Commissioner under 31A-2-403(6)(c)(i)

ATTENDEES

TITLE & ESCROW COMMISSION

Chair, Chase Phillips (<i>Agency, Weber County</i>)	Darla Milovich (<i>Agency, Salt Lake County</i>)
Vice Chair, Nancy Frandsen (<i>Insurer, Salt Lake County</i>)	Alison McCoy (<i>Agency, Tooele County</i>)
Randy Smart (<i>Public Member, Salt Lake County</i>)	Perri Babalis, <i>AG Counsel - TEC</i>

DEPARTMENT STAFF

Jon Pike, <i>Insurance Commissioner</i>	Reed Stringham, <i>Deputy Comm.</i>	Tracy Klausmeier, <i>P&C Dir.</i>
Randy Overstreet, <i>Licensing Dir.</i>	Danny Schoenfeld, <i>Finance Dir.</i>	Adam Martin, <i>MC Examiner</i>
Michael Covington, <i>CE Specialist</i>	Steve Gooch, <i>PIO Recorder</i>	Eddie Vasquez, <i>AG Counsel</i>

AGENDA

General Session: (Open to the Public)

- **Welcome** / Chase Phillips, Chair
- **Reading of Anchor Location Determination**
- **Telephone Roll Call**
- **New Business**
 - Review proposed rule changes under Executive Order 2021-12
 - R592-1: Title Insurance Licensing
 - R592-5: Title Insurance Product or Service Approval for a Dual Licensed Title Licensee
 - R592-6: Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business

Executive Session (None)

- **Adjourn**
- **Next Meeting: July 12, 2021** — Bonneville Room, Taylorsville State Office Building

2021 Meeting Schedule

Jan 11	Feb 8	Mar 8	Apr 19	May 10	Jun 14
Jul 12	Aug 9	Sept 13	Oct 18	Nov 8	Dec 20

2021 Goals

1. Continue making sure testing is relevant
2. Continue working with the Real Estate Commission
3. Continue working with the ULTA as a liaison
4. Increase awareness of wire fraud's effect on consumers and agencies
5. Increase awareness of affiliated business arrangements (ABA)

R592. Insurance, Title and Escrow Commission.

R592-1. Title Insurance Licensing.

R592-1-1. Authority.

This rule is promulgated ~~[pursuant to Subsections 31A-2-404(2)(a)(ii) and (b), which direct]~~by the Title and Escrow Commission pursuant to Subsections 31A-2-404(2)(a)(ii) and 31A-2-404(2)(b)~~[to make rules pertaining to the licensing of a title licensee and require the Title and Escrow Commission's concurrence in the issuance and renewal of title licensee licenses].~~

R592-1-2. Purpose and Scope.

(1) The purpose of this rule is to establish the Commission's preliminary concurrence in the commissioner's decision to issue or renew a title license under Subsection 31A-2-404(2)(b):

~~_____ (a) to establish rules for the licensing of a title licensee; and~~

~~_____ (b) to concur in the issuance and renewal of a title license in accordance with Section 31A-2-404(2)(b).~~

(2) This rule applies to ~~[all]~~a title licensee[s] and an applicant[s] for a title insurance license~~[or renewal of a title insurance license].~~

R592-1-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402~~["Title licensee" has the same meaning as found in Section 31A-2-402(3)].~~

R592-1-4. Licensing.

The Commission ~~[hereby]~~grants ~~[its]~~preliminary concurrence to the commissioner for the issuing~~[ance]~~ or renewing~~[al]~~ of title insurance licenses~~[issued by the commissioner]~~, subject to final concurrence as specified in Section R592-1-5, to an applicant that:

(1) complies with Sections 31A-23a-104, 31A-23a-105, 31A-23a-106, 31A-23a-107, 31A-23a-108, and 31A-23a-204 for initial application~~;~~~~[and]~~

(2) complies with Section 31A-23a-202 ~~[as an applicant]~~for ~~[a]~~renewal of a license; and

(3) meets ~~[all other]~~each requirement[s] for the issuance of a license.

R592-1-5. Commission Concurrence with License Issuance or Renewal.

(1) The commissioner will report to the ~~[Title and Escrow]~~Commission, at an interval and in a format acceptable to the commissioner and the Commission, the name[s] of each title licensee and applicant~~[s or licensees]~~ who is issued:

(a) ~~[who were issued]~~an initial license; ~~[and]~~or

(b) ~~[who were issued]~~a renewal license.

(2) ~~[At a meeting of the Commission]~~In an open and public meeting, the Commission shall:

~~_____ (a) give final concurrence; or~~

~~_____ (b) [shall]not concur with the licensing [action]~~decision of the commissioner.

(3) If the Commission ~~[votes to]~~does not concur with a licensing ~~[action]~~decision of the commissioner~~[for a licensee]~~, the commissioner shall commence an administrative proceeding under the Utah Administrative Procedures Act to deny, revoke, suspend, limit, or place on probation ~~[that]~~the license.

R592-1-6. Severability.

[If any section, term, or provision of this rule shall be adjudged invalid for any reason, such

judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

~~R592-1-7. Enforcement Date.~~

~~_____The commissioner will begin enforcing this rule upon the rule's effective date]~~If any provision of this rule, Rule R592-1, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

R592. Insurance, Title and Escrow Commission.

R592-5. Title Insurance Product or Service Approval for a Dual Licensed Title Licensee.

R592-5-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Sections 31A-2-404 and 31A-2-405~~[, which direct the Title and Escrow Commission to make rules to administer the provisions related to title insurance]~~.

R592-5-2. Purpose and Scope.

(1) The purpose of this rule is to set forth ~~[the]~~ requirements for a dual licensed title licensee to obtain:

(a) approval from the ~~[insurance-]~~ commissioner pursuant to Subsection 31A-2-405(2); ~~[and]~~ or

(b) expedited approval from the ~~[Title and Escrow-]~~ Commission pursuant to Subsection 31A-2-405(3).

(2) This rule applies to ~~[all-]~~ a dual licensed title licensee[s] and an applicant[s] for a title insurance license or renewal of a title insurance license.

R592-5-3. Definitions.

~~[For the purposes of this rule, the commissioner adopts the definitions.]~~ Terms used in this rule are defined in Sections 31A-1-301[;] and 31A-2-402[; and the following]. Additional terms are defined as follows:

(1)(a) "Dual licensed title licensee" has the same meaning as set forth in Section 31A-2-402.

(b) "Dual licensed title licensee" does not mean:

(i) a title licensee who holds an inactive license under Subsections 31A-2-402(3)(b)(i), (ii) ~~[and]~~ or (iii); or

(ii) a title licensee who holds an education provider certificate.

(2) "Need for expedited approval" means a significant hardship to the buyer or seller in the transaction.

(3) "Principal" means a person from whom a dual licensee has received compensation for submitting a transaction under one or more of ~~[his or her-]~~ the licensee's dual licenses. Examples include~~[, but are not limited to,]~~ a mortgage company, a real estate broker, an agency title insurance producer, a builder, or a developer.

(4) "Title insurance product" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(5) "Title insurance service" has the same meaning as the definition of "escrow" found in Subsection 31A-1-301(56).

R592-5-4. Filing Requirements, Processes and Procedures.

(1) Only a dual licensed title licensee ~~[can-]~~ may file a request for approval for the provision of a title insurance product or service.

(2) A complete filing consists of:

(a) a filing fee pursuant to Section 31A-3-103; and ~~[either]~~

(b) a "Dual Licensee Request ~~[F]~~ for Approval for the Provision of a Title Insurance Product

or Service" form; or

(c) a "Dual Licensee Request [F]for Expedited Approval for the Provision of a Title Insurance Product or Service" form.

(3) A filing to request approval of a "Dual Licensee Request for Approval for the Provision of a Title Insurance Product or Service" form must:

(a) be sent electronically to the commissioner via email to pcforms.uid@utah.gov; and

(b) include credit card information in the payment section of the form.

(4) An expedited filing to request approval of a "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form must:

(a) include a completed Section 6, Reason for Requesting Expedited Approval, on the "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form;

(b) be sent electronically to the Chair of the [~~Title and Escrow~~]Commission via email to pcforms.uid@utah.gov; and

(c) include credit card information in the payment section of the form.

(5) Approval or disapproval will be sent to the filer via return email.

R592-5-5. Severability.

~~[If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.~~

R592-5-6. Penalties.

~~———— A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Sections 31A-2-308 and 31A-2-405.~~

R592-5-7. Enforcement Date.

~~———— The commissioner will begin enforcing this rule 15 days after the rule's effective date]~~If any provision of this rule, Rule R592-5, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

R592. Insurance, Title and Escrow Commission.

R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R592-6-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Subsection 31A-2-404(2)~~[, which authorizes the Title and Escrow Commission ("the Commission") to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer, or individual title insurance producer].~~

R592-6-2. Purpose and Scope.

(1) ~~[This rule identifies.]~~ The purpose of this rule is to identify practices that constitute unfair methods of competition because the practices create unfair inducements for the placement of title insurance business.

(2) This rule applies to any person identified in Subsection 31A-23a-402(2)(a).

R592-6-3. Definitions.

~~[This rule incorporates the definitions set forth]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402~~[, and adopts the following]~~. Additional terms are defined as follows:

(1) "Bona fide real estate transaction" means:

(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or

(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2)(a) "Business activities" include sporting events, sporting activities, musical events, and art events.

(b) "Business activities" do not include awards banquets, recognition events, or similar activities sponsored by or for clients, or commercial travel.

(3)(a) "Business meals" include breakfast, brunch, lunch, dinner, cocktails, and tips.

(b) "Business meals" do not include awards banquets, recognition events, or similar activities sponsored by or for clients.

(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession, or occupation of:

(i) buying or selling interests in real property; and

(ii) making loans secured by interests in real property.

(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies, and the employees, agents, representatives, solicitors, and groups or associations of any of the foregoing.

(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance, or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Sections 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly, or monthly publication containing information and topical material for the benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Title producer" means a title insurer, agency title insurance producer, or individual title insurance producer.

(9) "Trade association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Prohibited Unfair Methods of Competition.

A person identified in [Subs]Section R592-6-2 who provides or offers to provide, directly or indirectly, any of the following benefits to any client has violated Sections 31A-23a-402 and 31A-23a-402.5 and has engaged in an unfair method of competition.

(1) Furnishing a title insurance commitment when the title producer is aware that no policy is intended to be issued without one of the following:

(a) sufficient evidence in the file of the title producer that a bona fide real estate transaction or listing agreement exists; or

(b) a request from a proposed insured to issue a title insurance commitment together with a payment of a minimum cancellation fee of \$200.

(2) Paying any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect that gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Subsection 31A-19a-209(5); or

(b) for a charge less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services that are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) Paying for, furnishing, or waiving all or any part of the rental or lease charge for space that is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate that is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title producer's facilities, including conference rooms or meeting rooms, to a client or its trade association, for anything other than providing escrow or title services, or related meetings, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) Co-habiting or sharing office space with a client of a title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title producer, [-]including a secretary, clerk, messenger, or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions, or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate

broker, or as a mortgage lender or mortgage company subject to Section 31A-2-405 and ~~[Section]~~Rule R592-5.

(14)(a) Payment or prepayment of the following:

(i) fees or charges of a professional, including an appraiser, surveyor, engineer, or attorney, whose services are required by any party or client to structure or complete a particular transaction; or

(ii) fees or charges of a client or party to the transaction, for example, subordination, loan, or HOA payoff request fees, that are required by any party or client to structure or complete a particular transaction.

(b) Subsection (14)(a) does not prohibit pre-payment of overnight mail and delivery fees that will be recovered through closing a transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food, or otherwise providing anything of value for an activity of a client, except as allowed under ~~[Subs]~~Section R592-6-5. Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of ~~[all]~~any kind[s], hunting trips or outings, golf or ski tournaments, artistic performances, and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under ~~[Subs]~~Section R592-6-5, or otherwise providing things of value for promotional activities of a client. Title producers may attend activities of a client if there is no additional cost to the title producer, other than their own entry fees, registration fees, and meals; the fees may not be greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

- (a) building plans;
- (b) construction critical path timelines;
- (c) "For Sale by Owner" lists;
- (d) surveys;
- (e) appraisals;
- (f) credit reports;
- (g) mortgage leads for loans;
- (h) rental or apartment lists; or
- (i) printed labels.

(19) Issuing a newsletter that is property specific or that highlights specific customers.

(20) Providing access to real property information that the title producer pays to produce, develop, or maintain, except:

(a) providing to a client, through any means including copies, a property profile that includes only the following:

- (i) the last vesting deed of public record;
- (ii) a plat map reproduction, locator map, or both;
- (iii) tax and property characteristics information from the Treasurer's and Assessor's offices;

and

- (iv) covenants, conditions, and restrictions; and

(b) Providing a client access to closing software that is related to a specific transaction identified in the title commitment.

(21)(a) Providing title or escrow services on real property where an existing or anticipated investment loan or financing has been or will be provided by the title producer or its owners or employees.

(b) Subsection (21)(a) does not apply to transactions involving seller financing.

(22)(a) Engaging in the following advertising activity:

(i) paying for any advertising on behalf of a client;

(ii) advertising jointly with a client on signs for subdivision or condominium projects or for the sale of a lot or lots in a subdivision or units in a condominium project;

(iii) placing an advertisement in a publication, including an internet web page and its links, that is hosted, published, produced for, or distributed by or on behalf of a client;

(iv) placing an advertisement that fails to comply with Section 31A-23a-402 and ~~Section~~ Rule R590-130;

(v) placing an advertisement that:

(A) is not purely self-promotional; or

(B) is in an official trade association publication that does not offer any title producer an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged;

(vi) advertising with free or paid social media services that are not open and available to the general public; or

(vii) paying a fee to share, like, respond to, comment on, or increase the visibility, ranking, or distribution of any social media involving a client or a client's social media page.

(b) Nothing in Subsection (22)(a) prohibits the following:

(i) advertising independently that the title producer has provided title insurance for a particular subdivision or condominium project, but the title producer may not indicate that all future title insurance will be written by that title producer; or

(ii)(A) writing or posting on social media services about an event that directly involves the title producer and a client; and

(B) referencing or linking to the event on the client's social media page or the client company's social media page.

(23) Using interests in other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies to enter into any agreement, arrangement, or understanding, or to pursue any course of conduct designed to avoid the provisions of this rule.

(24) For self-promotional open houses:

(a) holding more than two self-promotional open houses per calendar year for each owned or occupied facility, including branch offices;

(b) spending more than \$15 per guest per self-promotional open house;

(c) making guest expenditures on items in the form of a gift, gift certificate, or coupon; or

(d) holding a self-promotional open house on a client's premises.

(25) Making a donation to a charitable organization created, controlled, or managed by a client.

(26) Making a charitable donation that:

(a) is paid in cash;

(b) is paid by negotiable instrument to a payee other than the charitable organization;

(c) is distributed to anyone other than the charitable organization; or

(d) provides a benefit to a client.

(27) Distributing outside the regular course of business to clients, consumers, and members of the general public, self-promotional items that:

(a) have a value of more than \$10, including taxes, setup fees, and shipping;

(b) are edible;

(c) are personalized in the donee's name; or

(d) are given to clients or trade associations for redistribution.

(28) Making expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising if:

(a) the person representing the title producer is not present during the business meal or business activity;

(b) a substantial title insurance business discussion does not occur directly before, during, or after the business meal or business activity;

(c) the total cost of the business meal, the business activity, or both exceeds \$50 per person, per day;

(d) more than three individuals from an office of a client are provided a business meal or business activity in a single day; or

(e) the entire business meal or business activity takes place on a client's premises.

(29) Conducting a continuing education program that:

(a) is not approved by the appropriate regulatory agency;

(b) addresses matters other than title insurance, escrow, or related subjects;

(c) is less than one hour in duration;

(d) involves expenditure of more than \$15 per person including the cost of meals and refreshments; or

(e) is conducted at more than one individual, physical office location of a client per calendar quarter.

(30) Acknowledging a wedding, birth, or adoption of a child, or a funeral of a client or a member of the client's immediate family with flowers or gifts exceeding \$75.

R592-6-5. Permitted Methods of Competition.

The following are permitted methods of competition. In the event of a conflict between [Subs]Sections R592-6-4 and R592-6-5, [Subs]Section R592-6-5 is controlling.

(1) A title producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

(2) A title producer may provide clients access to water, beverages, and edible treats at the title producer's premises.

(3) A title producer may provide to a client the documents used to produce a title commitment and may provide access to them through any means.

R592-6-6. Severability.

If any provision of this rule, Rule R592-6, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.